

PARLIAMENT OFFICE,
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Georgetown,
Guyana.

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The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 13 of 1994

FISCAL ENACTMENTS (AMENDMENT) BILL 1994

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement.
2. Amendment of Income Tax Act.

3. Amendment of Income Tax (In Aid of Industry) Act.
4. Amendment of Corporation Tax Act.
5. Amendment of Capital Gains Tax Act.

A BILL

Intituled

A. D. 1994

AN ACT to amend the Income Tax Act, the Income Tax (In Aid of Industry) Act, the Corporation Tax Act and the Capital Gains Tax Act.

Enacted by the Parliament of Guyana:-

Short title
and
commencement.

1. (1) This Act may be cited as the Fiscal Enactments (Amendment) Act 1994.

Amendment
of Income
Tax Act.
Cap. 81:01

(2) Section 3 shall, in accordance with section 15 of the Interpretation and General Clauses Act, come into operation on the date of publication of this Act and the other sections shall come into operation with respect to and from the year of assessment commencing on 1st January, 1995.

2. The Income Tax Act is hereby amended in the following respects:-

- (a) in section 5(c), by the insertion, after the word "dividends", of the words, "not being dividends paid by companies resident in Guyana";
- (b) in section 39(1)(a), by the substitution, for the words "whether resident in Guyana or not", of the words "not resident in Guyana";
- (c) by the deletion of sections 41, 42 and 46(1).

Amendment of
Income Tax
(In Aid of Industry)
Act.
Cap. 81:02

3. The Income Tax (In Aid of Industry) Act is hereby amended by the deletion of Part 1 thereof:

Provided that notwithstanding the deletion of Part 1 of the aforesaid Act, any direction issued by the Minister under section 2(1)(a) or (b) thereof, or a direction issued by the Minister under section 2(1)(c) thereof extending a tax holiday period, shall continue in force until it would have otherwise expired if the said Part had not been deleted.

4. The Corporation Tax Act is hereby amended in the following respects

Amendment of
Corporation
Tax Act.

- (a) in section 4, by the deletion of paragraph (d);
- (b) in section 7(a), by the deletion of the words, "other than preference dividends,";
- (c) in section 8, by the deletion of subsection (3);
- (d) by the insertion, after section 10, of the following sections as sections 10A and 10B -

Cap. 81:03

10 A. (1) - Where for any year of assessment the corporation tax payable by a company is less than two per cent of the turnover of the company in the year of income immediately preceding that year of assessment, then, notwithstanding anything contained in sections 4 and 10, and subject to the other provisions of this section, for the aforesaid year of assessment there shall be levied on, and paid by, the company a corporation tax (in this Act referred to as "minimum tax") at the rate of two per cent of the turnover of the company in such year of income:

Mini-
mum
tax.

Provided that no minimum tax shall be payable by a company for any year of assessment where its turnover in the year of income immediately preceding that year of assessment did not exceed one million two hundred thousand dollars.

(2) A resident company shall be liable to pay the tax on its entire turnover, wherever arising or accruing and a non-resident company shall be liable to pay the tax on its turnover directly or indirectly arising from its operations in Guyana.

(3) The following companies are exempt from the minimum tax -

- (a) the Guyana Electricity Corporation;
- (b) the Guyana Sugar Corporation Limited;
- (c) the Linden Mining Enterprise Limited;
- (d) the Berbice Mining Enterprise Limited;
- (e) any company carrying on insurance business in Guyana;

- (f) any company exempt from corporation tax;
- (g) any company at least ninety per cent of the turnover of which is from the business of tourism;
- (h) any company at least ninety per cent of the turnover of which is from agriculture.

(4) In computing the turnover of a company the following shall not be taken into account.

- (i) income or receipts, whether in money or money's worth, which are exempt from corporation tax under section 7;
- (ii) turnover of such hotels as may be specified by the Minister by notification in the Gazette, being hotels providing mainly for the accommodation of tourists.

(5) Where a company has paid minimum tax for any year of assessment, the corporation tax payable by that company for that year of assessment shall be set off against the minimum tax and the excess amount of minimum tax shall be allowed to be carried forward and set off against the corporation tax payable by the company for the succeeding year or years of assessment, to the extent to which such corporation tax is in excess of two per cent of the turnover of the company in the year of income immediately preceding the year or each of such years of assessment.

(6) Except to the extent to which they are inconsistent with this section -

- (a) the other provisions of this Act; and
- (b) the provisions of the Income Tax Act as applied in relation to corporation tax by this Act,

shall mutatis mutandis apply in relation to the minimum tax:

Provided that section 19, proviso (c), of the Income Tax Act, as applied in relation to corporation tax, shall not apply to any company liable to pay minimum tax.

(7) In this section -

- (a) "agriculture" does not include forestry or processing of paddy, coconut or other similar agricultural produce;

- (b) "turnover", in relation to a company, means gross receipts of the company, whether received in Guyana or not, in money or moneys worth in any year of income from the company's activities, including all cash and credit sales, receipts on account of work done commissions and fees receivable, and lump sum settlements, without any deductions for expenses, taxes or duties or of any other nature:

Provided that in computing the gross receipts of a company in any year of income the consumption tax paid by that company in relation to any sales, being the source for such receipts, shall be excluded:

Provided further that the receipts in money or money's worth from any source other than a source referred to in section 4 shall not be taken into account in determining the turnover of a company.

10B. (1) There shall be levied and paid corporation tax (in this Act referred to as "withholding tax") by every person on payments made by him or it or on his or its behalf to any non-resident company on account of any contract undertaking by or on behalf of that non-resident company, at the rate of ten per cent of such payment made in any year of account.

Withhold-
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(2) Where any payment is made by any person or on his or its behalf to a non-resident company in respect of a contract undertaking, the person shall, within thirty days from the date on which the payment is made, account to the Commissioner for the payment in such form as may be specified by him or prescribed by regulations and pay over to the Commissioner the withholding tax payable in respect of the payment.

(3) The person, who or which is liable to pay the withholding tax under subsection (1) in respect of any payment, may deduct it from the payment.

(4) The withholding tax paid under subsection (1) in respect of any payment made to a non-resident company in any year of income shall be given credit in computing the corporation tax payable by the non-resident company for the year of assessment following such year of income.

(5) For the purposes of this section, where a payment on ac-

count of a contract undertaking is made to any office, branch or agency of any non-resident company in Guyana, the payment shall be deemed to have been made to the non-resident company.

(6) Where any person, liable under subsection (2) to account for and pay over any amount by way of withholding tax to the Commissioner, fails or refuses to do so, in addition to the withholding tax, there shall become payable by such person to the Commissioner, by way of penalty, an amount which shall be equal to the amount of withholding tax in respect of which the default was committed and such penalty shall be recoverable in the same manner as the withholding tax.

(7) Except to the extent to which they are inconsistent with this section -

- (a) the other provisions of this Act; and
- (b) the provisions of the Income Tax Act as applied in relation to corporation tax by this Act,

shall mutatis mutandis apply in relation to the withholding tax:

Provided that section 96 of the Income Tax Act as applied to corporation tax shall not apply in relation to withholding tax.

(8) In this section -

- (a) "contract" includes a sub-contract;
- (b) "contract undertaking" means the supply of goods of services, or the undertaking of any work, for reward (whether the amount or nature of the reward is, at the time of the making of the contract, fixed and agreed upon or not) under or pursuant to any contract entered into between two or more parties;
- (c) "goods" includes wares, merchandise, articles, chattels and things of any kind or material whatsoever;
- (d) "payment" means gross payment without any deduction whatsoever;

- (e) "work" includes any construction work, manufacture of an article or thing, and repairing, fashioning, altering, cleansing or servicing any article or thing.'

5. Section 8 of the Capital Gains Tax Act is hereby amended by the re-numbering of it as subsection (1) thereof and by the insertion, after subsection (1) as so re-numbered, of the following subsection as subsection (2) -

Amendment
of capital
Gains Tax
Act
Cap. 81:20

"(2) Capital gains tax shall not be payable upon capital gains arising to any person from the change of ownership of shares or stock in public companies limited by shares, and such capital gains shall not be deemed to be part of the chargeable income of that person under the provisions of the Income Tax Act, whether or not the second proviso to subsection (1) applies to such capital gains:

Provided that in the case of a company which was a private company immediately before 7th March 1994, and was subsequently converted into a public company limited by shares, this subsection shall apply only to capital gains arising from the change of ownership of shares or stock after the expiry of two years from the date on which the company was converted into a public company limited by shares."

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Income Tax Act, Cap. 81:01, the Income Tax (In Aid of Industry) Act, Cap. 81:02, the Corporation Tax Act, Cap. 81:03, and the Capital Gains Tax Act, Cap. 81:20, to give effect to, proposals relating to direct taxes contained in the Budget. The following are the main changes sought to be achieved by the amendments -

2. Taxation of dividends and capital gains on disposal of shares -
 - (i) Exemption of dividends paid by companies resident in Guyana on ordinary and preference shares, from income tax and corporation tax. (See amendment of section 5(c) of Income Tax Act, Cap. 81:01, by the clause 2(a) of the Bill.
 - (ii) Exemptions of dividends paid on ordinary and preference shares, other than dividends paid to non-resident persons, paid by compa

nies resident in Guyana, from withholding tax payable under section 39(1) (a) of the Income Tax Act, Cap. 81:01. (See clause 2(b) of the Bill).

- (iii) Ensure that dividends paid on preference shares are treated for corporation tax purposes in the same manner as dividends paid on ordinary shares. (See clause 4(a), (b) and (c) of the Bill).
- (iv) Exemption from capital gains tax under the Capital Gains Tax Act, Cap. 81:20, of capital gains derived by disposal of shares and stock in public companies limited by shares. (See clause 5 of the Bill). However, in the case of companies which were private companies on 7th March 1994, the date on which the budget for 1994 was presented in the National Assembly, and subsequently converted into public companies limited by shares, the exemption will apply only to capital gains received by the sale of shares or stock after the expiry of two years from the date of the conversion.

3. Tax holiday -

Abolition of the power of the Minister to grant tax holiday repeal of Part 1 of the Income Tax (In Aid of Industry) Act, Cap. 81:02. It is not intended to take away tax holidays already granted by direction issued by the Minister under that Part. (See clause 3 of the Bill).

4. Minimum tax and withholding tax under Corporation Tax Act, Cap. 81:03 -

Two new taxes are proposed to be imposed - one, a minimum tax of 2% on the turnover of any company and two, a 10% withholding tax on payments to non-resident companies for their operations as contractors and sub-contractors. (See new section 10A and 10B proposed to be inserted in the Corporation Tax Act, Cap. 81:03, by clause 4 of the Bill).

- 5. The corporation tax payable by a company for any year of assessment, for which it has paid the minimum tax, will be allowed to be set off against the minimum

tax and the excess minimum tax paid by a company in respect of that year of assessment will be allowed to be carried forward and set off against the corporation tax payable for the succeeding year or years of assessment, provided that for any year of assessment the company will pay not less than an amount equal to the minimum tax. A company need not pay minimum tax where its turnover in the relevant year of income did not exceed one million two hundred thousand dollars.

6. The exemptions from the minimum tax are dealt with in the new section 10A(3).
7. The withholding tax paid in respect of any payment made to a non-resident company under the proposed new section 10B will be given credit in computing the corporation tax payable by that company.